

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANTHONY TELLES

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Appeal No. 2003-1705  
Application No. 09/904,058

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ON BRIEF

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Before OWENS, KRATZ and DELMENDO, Administrative Patent Judges.  
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 7-13, which are all of the claims pending in this application.

BACKGROUND

Appellant's invention relates to an annular sealing ring for positioning between a toilet bowl and floor surface. For a further understanding of the invention, reference is made to claim 7, which is reproduced below.

7. A generally planar annular sealing ring having inner and outer diameters and adapted for positioning between a toilet bowl and a floor surface on which said toilet bowl rests, said annular sealing ring being shaped in any effective toilet sealing ring configuration, said annular sealing ring comprising polyethylene foam characterized by resilience and the ability to recover substantially its original shape and thickness after compression loading.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Izzi, Sr. (Izzi)	4,482,161	Nov. 13, 1984
Quandt	5,988,699	Nov. 23, 1999

Claims 7-13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Izzi in view of Quandt.

We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed by appellant and the examiner concerning the issues before us on this appeal.

OPINION

Having considered appellant's arguments set forth in the brief and reply brief and the examiner's position set forth in the answer, we are not persuaded that the examiner has established the obviousness of the claimed subject matter. Accordingly, we will reverse the examiner's rejection. Our reasoning follows.

Izzi discloses a gasket (annular sealing ring) for use between a toilet bowl and floor. Izzi (column 2, lines 52-59) teaches that the flexible gasket may be made of elastic material "that has a memory so that it returns to its original shape after flexing to receive a toilet bowl in place . . . ."

Quandt (column 2, lines 47-54) discloses the use of polyethylene foam as a tank drain and flange gasket material that has "fluid-tight sealing characteristics" and is more economical than elastomers.

Based on the combined teachings of Izzi and Quandt, the examiner urges that it would have been obvious for one of ordinary skill in the art to use polyethylene foam as a flexible gasket (sealing ring) material that is adapted for positioning between a toilet bowl and floor surface.

Appellant, on the other hand, urges that the different application of the foam sealing material in Quandt would not suggest the formation of a sealing ring that is adapted for a toilet seal from such foam material to an ordinarily skilled artisan. In this regard, appellant asserts that there are numerous factors requiring consideration in selecting a material for the type of gasket here claimed, such as listed on page 6 of the brief, and that the teachings of Quandt do not address those considerations.

We find ourselves in agreement with appellant on this record. While the examiner (answer, page 5) is correct that Izzi teaches a sealing gasket that is suitable for a toilet seal environment, the sealing gasket of Izzi is not made of polyethylene foam. The examiner has not reasonably explained how the teachings of Quandt with respect to tank seals made of polyethylene foam coupled with Izzi's general description of some of the desirable properties of a sealing material for a toilet seal environment would be suggestive of selecting polyethylene foam as the material for the gasket of Izzi with a reasonable expectation of success in so doing. See In re Dow Chemical Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988). "Both

the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." Id.

Thus, a prima facie case of obviousness is established by showing that some objective teaching or suggestion in the applied prior art taken as a whole and/or knowledge generally available to one of ordinary skill in the art would have led that person to the claimed invention, including each and every limitation of the claims, without recourse to the teachings in appellants' disclosure. See generally In re Oetiker, 977 F.2d 1443, 1447-48, 24 USPQ2d 1443, 1446-47 (Fed. Cir. 1992) (Nies, J., concurring). Here, the examiner simply has not furnished a convincing rationale explaining how the combined teachings of the applied references would have led one of ordinary skill to the here claimed invention, even if they were combinable. Nor has the examiner furnished any other prior art evidence, such as a listing of the known properties of polyethylene foam materials at the time of the invention, that may have been sufficient, in combination with the other applied references, to suggest the claimed subject matter to one of ordinary skill in the art of designing and manufacturing toilet seat seals.

Consequently, we will not sustain the examiner's rejection.

CONCLUSION

The decision of the examiner to reject claims 7-13 under 35 U.S.C. § 103(a) as being unpatentable over Izzi in view of Quandt is reversed.

REVERSED

TERRY J. OWENS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
PETER F. KRATZ	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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ROMULO H. DELMENDO	)	
Administrative Patent Judge	)	

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